

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NICOLAS GOUREAU and STEPHANIE
MENKIN, individually and derivatively on behalf
of GOOBERRY CORP., a New York corporation,

Plaintiffs,

v.

MARCUS LEMONIS, an individual, ML
RETAIL, LLC, a Delaware limited liability
company, and MARCUS LEMONIS, LLC, a
Delaware limited liability company,

Defendants,

and

GOOBERRY CORP., a New York corporation,

Nominal Defendant.

Civil Action No. 1:20-cv-04691

**PLAINTIFFS' MOTION FOR CLARIFICATION AND/OR FOR AN ORDER ALTERING
OR AMENDING JUDGMENT UNDER RULE 59(e) OR, IN THE ALTERNATIVE, FOR
RELIEF FROM JUDGMENT UNDER RULE 60(b)**

PLEASE TAKE NOTICE that Plaintiffs Nicolas Goureau and Stephanie Menkin, through their undersigned counsel, hereby move for an Order clarifying as to whether the judgment rendered in this case on November 22, 2021 (Dkt. No. 99) effectuates dismissal of the claims included therein with or without prejudice.¹

PLEASE TAKE FURTHER NOTICE that in the event the Court clarifies that the claims were dismissed with prejudice, Plaintiffs also move for an Order altering or amending judgment under Rule 59 (e) or, in the alternative, for relief from judgment under Rule 60(b) for the reasons stated in the

¹ The docket entry description for Dkt No. 99 also incorrectly identifies the judgment as issued in favor of "defendants" NBCUniversal Media, LLC, Roberta Raffel and MLG Retail, LLC, yet they had never become parties to this proceeding. Rather, those were "proposed" defendants in Plaintiffs' Proposed Second Amended Complaint (Dkt. No. 70-4), which was never accepted by the Court as an operative pleading in this case.

accompanying Memorandum of Law in Support as well as the supporting Affidavit of Gerard P. Fox and the exhibits annexed thereto.

DATED: December 9, 2021

GERARD FOX LAW, P.C.

/s/ Gerard P. Fox

Gerard P. Fox
1345 Sixth Avenue, 33rd Floor
New York, New York 10105
Telephone: (646) 690-4980
Facsimile: (646) 368-9328
gfox@gerardfoxlaw.com